IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9362 OF 2005

1.Shri Jagannath Gopala Gaidhani,

Age : 56 years, Occ: Agriculture

2. Shri Rajendra Jagannath Gaidhani,
Age: 32 years, Occ: Unemployed,
Both At & Post : Palse, Taluka :
Nashik, Dist-Nashik. ...Petitioners

V/s.

1. The Minister, Urban Development,
(Govt. of Maharashtra, Mantralaya,
Mumbai.

2. The Sinnar Municipality,
Sinnar, District – Nashik.

3. The Chief Executive Officer,
Sinnar Municipality, Sinnar,
District. Nashik.

4. The President Sinnar Nagar
Parishad, Sinnar,
District – Nashik.

5. The District Collector,
Nashik.

6. Maharashtra Jivan Pradhikaran,
Sinnar, District- Nashik. ...Respondents

Shri S.B. Shetye with Ms.Smita Gaidhani for Petitioners.

Shri P.P. Kakade, Assistant Government Pleader, for Respondent No.1 and 5.

Shri M.R. Katikar for Respondent No.3.

Mrs.Neeta Karnik for Respondent No.6.

CORAM : H.S. BEDI, C.J., &
V.M. KANADE, J.

DATED : OCTOBER 18, 2006.

ORAL JUDGMENT (PER V.M. KANADE, J.) :-

1. By this petition, the petitioners are seeking an appropriate relief, order or direction quashing the acquisition of their plot of land, admeasuring 20 x 30 metres from land bearing Gat No.1037 situated at village Palse, District Nashik by the respondent and alternatively for a direction directing the respondents to give employment to petitioner no.2 in Sinnar Municipality.

2. Brief facts which are relevant for the purpose of deciding this writ petition are as under :-

3. The petitioners are farmers who own agricultural land bearing Gat No.1037 situated at village Palse, District Nashik. Petitioner No.2 is

the elder son of petitioner no.1 and Shri Sanjay Gaidhani is the younger son of petitioner no.1.

4. Respondent no.6 was in need of land for construction of a Jackwell. Sometime in the year 1999, a meeting of the villagers was called in order to explore the possibility of acquiring the land by consent of the parties particularly because the land was required to overcome the problem of acute shortage of water in the said area. In this meeting, other land owners refused to part with their land. Petitioner No.1 had also initially refused to give his land. However, authorities persuaded him and assured him that if the petitioner give his land without claiming any compensation, then in that case respondents would employ his son in the Sinnar Municipality in accordance with his qualification.

5. Accordingly, a resolution was passed on 29th January, 1999 in which this assurance was acknowledged in the resolution and it was resolved to employ petitioner no.2 in the Nagar Parishad in the category of Project Affected Persons. It was also resolved that necessary action would be taken forthwith.

6. Accordingly, petitioner no.1 handed over the said land and possession receipt dated 20th March, 1999 was prepared by respondent No.6.

7. However, thereafter, the CEO Sinnar Municipality did not employ petitioner no.2 as promised. It is an admitted position that no compensation was paid to the petitioner in view of the assurance which was given by respondent no.6 to give employment to petitioner no.2 in Sinnar Municipality. Petitioner no.2 after having passed his SSC, completed ITI course of Fitter in 1992-1994 and ITI course of Electrician in the year 2000. Petitioner No.1 reminded the respondent about the assurance that was given to him. He again reminded respondent no.1 that there was post of Pump Operator which had become vacant in the Municipality and petitioner no.2 had the necessary qualification for the said job and therefore, he should be appointed on the said post. The letter of petitioner no.1 was forwarded by respondent no.3 to respondent no.5. However, no action was taken by respondent no.5-The District Collector, Nashik. The Collector's office in the meanwhile informed the Municipality that the appointment for the post of Pump Operator requires Government approval and therefore, the President,

Sinnar Municipality wrote a letter to the Urban Development, State of Maharashtra, seeking approval for the appointment of petitioner no.2. In spite of that petitioner no.2 was not appointed in the said post. The petitioner thereafter sent notice under Section 80 of the Civil Procedure Code to the respondents. Thereafter, in 2003, the petitioner was informed that the vacancies of Pump Operator would be filled in from the candidates which were sent through Employment Exchange. The petitioner accordingly got his name registered with the Employment Exchange.

8. In the meantime, the younger son of petitioner no.1 Sanjay Gaidhani received a letter dated 11th June, 2004 which was issued by the CEO Sinnar calling him for interview for the post of Pump Operator. It was stated that the name of the said Shri Sanjay was recommended by the Sub-Regional Employment Scheme Office. In the meantime, the younger son of petitioner no.1 was selected for the post of Pump Operator and the petitioner was informed that if he wanted him to be appointed in the said post, he should give consent letter stating that the petitioners alongwith said Sanjay are releasing all their rights, title, interest in the plot of land which was taken over by respondent no.5 in

the year 1999. The petitioners were facing grave financial hardship and they had no option but to sign the said consent letter. Thereafter, the respondents did not give employment to petitioner no.2 and therefore, the petitioner has filed this petition under Article 226 of the Constitution of India.

9. The learned Counsel for the petitioners submitted that the contract was executed by the petitioner and the respondent in which they had given an assurance to the petitioner that in lieu of the land which was acquired by the Municipality, petitioner no.2 would be given employment in Sinnar Municipality. He submitted that on one pretext or other, the assurance was not fulfilled. It is submitted that the respondents are duty bound to give employment to petitioner no.2. He invited our attention to the resolution as also other correspondence and the letters written by CEO Municipality to Government from time to time.

10. The learned Counsel for the Municipality, on the other hand, submitted that petitioner no.1's younger son was given employment and therefore, petitioner no.2 could not make any claim in lieu of the agreement which was executed between petitioner no.1 and respondent no.6.

11. By consent of the parties, Rule. Rule made returnable forthwith. We have given our anxious consideration to the submissions made by the learned Counsel for the petitioners and the respondents.

12. We are of the view that first submission made by the learned Counsel appearing on behalf of the petitioners will have to be accepted. It is an admitted position that the land of petitioner no.1 was acquired for the construction of Jackwell after taking into consideration the acute water shortage in the village. Admittedly, no compensation amount has been paid to petitioner no.1. A resolution has been passed by the Municipality in which they have in categorical terms stated that in lieu of the land which is acquired by the Municipality, the son of petitioner no.2 would be appointed as an employee of the Sinnar Municipality. It was resolved that Municipality would treat petitioner no.2 as a Project

Affected Person and accordingly provide employment to him. It is also an admitted position that the younger son of petitioner no.1 was appointed after he applied through proper channel i.e. Employment Exchange and appeared for the interview along with other selected candidates and was appointed through the normal channel of employment as prescribed under law. It, therefore, cannot be said that the younger son of petitioner no.1 was appointed as a Project Affected Person or that he was given employment in lieu of the assurance given by the Municipality. The Municipality is, therefore, now estopped from denying employment to petitioner no.2 on the ground that the younger son of petitioner no.1 was appointed in normal course as an employee of the Municipality. Relying on the assurance of respondent no.6, petitioner no.2 has not taken employment elsewhere. It is further an admitted position that the President of Sinnar Municipality had sent representation to the State Government for approval of appointment of the petitioner as a Pump Operator. However, approval was not granted. That cannot be a ground for refusing to appoint petitioner no.2 as an employee of the Municipality in other departments subject to his educational qualifications, to appoint petitioner no.2 on a post in the Sinnar Municipality which fulfills the eligibility criteria of the educational

qualifications of petitioner no.2. Under these circumstances, the contentions raised by the learned Counsel for the Municipality cannot be accepted.

13. The Municipality acquired the land of the petitioner without paying compensation. It gave an assurance to petitioner no.1 of giving employment to his son. This was in lieu of compensation payable to petitioner no.1. The Municipality also has accepted that the petitioner is a Project Affected Person. The Writ Petition, therefore, will have to be partly allowed.

14. The Municipality is directed to condone the age of petitioner no.2 and appoint him as an employee of the Municipality in any post which suits the eligibility criteria prescribed by the Municipality and which criteria is fulfilled by petitioner no.2. It is clarified that the Corporation shall not deny the claim of petitioner no.2 on the ground that he is now age barred and his appointment shall be deemed to be made from the date on which from 2001. However, he shall not be entitled to get any back wages or any other benefits save and except the continuity of service from March 2000.

. Writ Petition is allowed in the above terms.

CHIEF JUSTICE

V.M.KANADE, J.